

**§ 839.1118 Will my annuity be actuarially reduced because I had Government contributions in my TSP account?**

Retirees and survivors of deceased employees who received a Government contribution to their TSP account after being corrected to FERS and who later elect CSRS Offset under the FERCCA are allowed to keep the Government contributions, and earnings on the Government contributions in the TSP account. Instead of adjusting the TSP account, the FERCCA requires that the CSRS-Offset annuity be reduced actuarially.

**§ 839.1119 How is the actuarial reduction for TSP computed?**

(a) The part of your TSP account on the date you retired that is Government contributions and earnings on those Government contributions forms the basis for the actuarial reduction. OPM will divide the Government contributions and earnings by the present value factor for your age (in full years) at the time you retired. OPM will then round the result to the next highest dollar amount, which will be the monthly actuarial reduction amount.

(b) If a survivor annuity is the only benefit that is payable, the present value factor for the survivor's age at the time of death is used. The survivor benefit is not reduced for TSP if the retiree's rate was reduced.

## SURVIVOR BENEFITS

**§ 839.1121 What is the Actuarial Reduction for the Basic Employee Death Benefit (BEDB)?**

If you received a BEDB under FERS and you elect CSRS Offset under these rules, you do not have to pay back the BEDB. Instead, the FERCCA requires that OPM actuarially reduce your survivor annuity. The reduction will be the amount of the BEDB divided by the present value factor for your age at the time of the employee's death. The result is rounded to the next highest dollar amount and is the monthly actuarial reduction amount. If you elected to receive the BEDB in installments rather than a lump sum, the lump-sum amount is used for the purpose of computing the actuarial reduction.

**§ 839.1122 Does receipt of a one-time payment of retirement contributions as a death benefit prevent me from electing CSRS Offset?**

You may still elect CSRS Offset if otherwise eligible. OPM will collect the amount of the one-time death benefit from any survivor benefits that are payable.

**Subpart L—Discretionary Actions by OPM****§ 839.1201 If I took legal action against my employer because of a qualifying retirement coverage error, can OPM reimburse me for expenses related to my legal actions?**

(a) The FERCCA allows OPM, in its sole discretion, to reimburse you for necessary and reasonable expenses you actually incurred while pursuing a legal or administrative remedy of your qualifying retirement coverage error.

(b) Necessary and reasonable expenses include actual amounts paid for attorney fees, court costs, expert witness fees, and other litigation expenses.

(c) You may not receive reimbursement under this section if you received a monetary award that compensated you for your litigation expenses.

(d) You must support your request for reimbursement with evidence that supports your claim.

(e) In determining what is a necessary and reasonable expense, OPM will consider:

- (1) The type and amount of the expense;
- (2) The circumstances that gave rise to the expense; and
- (3) Whether the expense is directly related to litigation concerning a retirement coverage error.

**§ 839.1202 Can OPM waive repayment of a monetary award I received as resolution of the harm caused me by a qualifying retirement coverage error?**

(a) The FERCCA allows OPM, in its sole discretion, to waive repayment of all or part of a settlement payment or court-ordered payment if you can demonstrate that CSRS Offset coverage does not fully compensate you for your losses.

## § 839.1203

(b) Your request for waiver must state why you believe waiver of repayment is appropriate and include any evidence that supports your request.

### **§ 839.1203 Can OPM compensate me for my losses if I did not take any legal action against my employer, but did incur some expenses because of a qualifying retirement coverage error?**

(a) The FERCCA allows OPM, in its sole discretion, to compensate you for a monetary loss that is a direct and proximate result of your retirement coverage error.

(b) Monetary losses include payments of additional Social Security taxes, payment of additional retirement deductions, and other out-of-pocket expenses that you incurred because of a retirement coverage error.

(c) You must substantiate your claim for losses with any evidence that supports your request.

(d) OPM cannot pay you for:

(1) Claimed losses related to forgone contributions and earnings under the TSP, other than lost earnings on make-up contributions to the TSP as provided in subpart J of this part; and

(2) Claimed losses related to any other investment opportunities.

### **§ 839.1204 On what basis will OPM review claims under this subpart?**

(a) OPM will base its decision on only the written record, including all of your submissions and other documentation in OPM's possession.

(b) At OPM's discretion, OPM may request your employer to provide an administrative report. The report may include:

(1) A description of the retirement coverage error;

(2) A statement as to whether a settlement or other court-ordered award was made;

(3) The employer's recommendation for resolution of the claim; and

(4) Any other information your employer believes OPM should consider.

(c) The burden of proof that the criteria for approving a reimbursement of expenses is on you.

## 5 CFR Ch. I (1–12 Edition)

### **§ 839.1205 Does the Director of OPM review the claims?**

The Associate Director for Retirement and Insurance and his or her delegates have the authority to perform the Director's actions, as set out in this subpart (see section 2208 of the FERCCA).

### **§ 839.1206 How do I submit a claim under this subpart?**

(a) No specific form is required. Your request must be in writing and contain the following information:

(1) It must describe the basis for the claim and state the dollar amount you seek to receive;

(2) It must include your name, address, and telephone number;

(3) It must include the name, address, and telephone number of your current or last employer;

(4) It must be signed by you; and

(5) It must include any information you believe OPM should consider, such as cancelled checks or other evidence of amounts you paid.

(b) Send your claim to: Office of Personnel Management, Retirement and Insurance Service, ATTN: FC Section, Washington, DC 20415–3200

## **Subpart M—Appeal Rights**

### **§ 839.1301 What if my employer determines my error is not subject to these rules?**

(a) Your employer must provide you with a written decision. The decision must include the reason for the decision, and notice of your right to appeal the decision to the MSPB.

(b) If your employer determines that it cannot waive the time limit for making an election under § 839.612, the decision must inform you of your right to ask OPM to review the decision. OPM will advise you in writing of your appeal rights following its review of your employer's decision.

### **§ 839.1302 What types of decisions can I appeal?**

(a) You can appeal to the MSPB a decision that affects your rights and interests under this part, except an OPM decision under subpart L (see § 839.1303). Some examples of decisions are: